

Attorney Docket No.: DC-0153
Inventors: Guyre et al.
Serial No.: 09/817,950
Filing Date: March 27, 2001
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REMARKS

Claims 1-3 are pending in the instant application. Claim 1-3 have been rejected. No new matter has been added by this amendment. Reconsideration is respectfully requested in light of the following remarks.

I. Rejection of Claims Under 35 U.S.C. §103

The Examiner has maintained the rejection of claims 1-3 under 35 U.S.C. §103(a) as being unpatentable over Coligan et al. (Current Protocols in Immunology, Green Publishing Associates and Wiley-Interscience, New York, 1991; pages 2.1.1-2.1.3, 2.1.9-2.1.11, and 2.1.17-2.1.22) in view of U.S. Patent 5,077,216, and Zwaldo et al. (IDS Reference BA). The Examiner suggests that it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the antibodies taught in the '216 patent and Zwaldo et al. in the ELISA taught by Coligan et al. to detect and monitor CD163 levels in a biological sample during an inflammatory condition/process by detecting CD163 as taught by Zwaldo et al. Further, the Examiner suggests that one of ordinary skill in the art would have been motivated to substitute the antibodies taught in the '216 patent and Zwaldo et al. in the ELISA taught by Coligan et al. to detect and monitor CD163 because detecting CD163 levels can be used to monitor an inflammatory response cascade in a patient, as taught by Zwaldo et al.

Applicants respectfully traverse this rejection.

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At the outset, Applicants respectfully disagree with the Examiner's suggestion that the combined teachings of the cited references provide the claimed invention. While each reference teaches certain aspects of the invention, none of these references when combined, teach that CD163 is useful for monitoring an early signaling event in an inflammatory response cascade in a patient. Rather, Zwaldo et al. teach that the RM3/1 antigen (i.e. CD163) is a surface antigen which is preferentially expressed by macrophages appearing late in the inflammatory response in acute inflammatory tissue, e.g. gingivitis, and to varying degrees in chronic inflammation. Zwaldo et al. conclude that the RM3/1 antibody detects a macrophage phenotype which seems to be associated with the healing phase of the inflammatory process. Likewise, the '216 patent does not teach temporal regulation of CD163, rather this reference teaches cell type-specific expression of p155. Moreover, the primary reference of Coligan et al. teaches nothing of the temporal or spatial expression of CD163. To establish a *prima facie* case of obviousness, MPEP § 2143 states that the prior art references when combined must teach or suggest all the claim limitations. As Coligan et al. and patent '216 do not teach temporal regulation of CD163 and Zwaldo et al. teach that CD163 is associated with the late or healing phase of the inflammatory process, the combined references do not teach the claim limitation that CD163 is useful for monitoring an early signaling event in an inflammatory response cascade.

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In addition, it was not until after the filing of priority document 60/192,529 filed March 28, 2000 that the art provided the skilled artisan with the knowledge that p155 and CD163 were one and the same protein. Thus, there would be no suggestion or motivation as required under MPEP 2143.01 to combine the antibodies of Zwaldo et al. with the antibodies taught by the '216 patent in an ELISA taught by Coligan et al. to arrive at the assay of the claimed invention. It is only within view of the teachings of the instant specification that the skilled artisan would conclude that the RM3/1 antigen (i.e. CD163) and p155 were the same protein and therefore be motivated to combine the antibodies of the cited references in a detection assay for CD163 to monitor an early signaling event in an inflammatory response cascade. Accordingly, withdrawal of this rejection is respectfully requested.


II. Conclusion

The Applicants believe that the foregoing comprises a full and complete response to the Office Action of record.

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Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,



Jane Massey Licata
Registration No. 37,257

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Licata & Tyrrell P.C.
66 E. Main Street
Marlton, New Jersey 08053

(856) 810-1515